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29 December 1950

General Counsel

Personnel Director

Performance Rating Act of 1950

1. Public Law 673, 81st Congress, "Performance Rating Act of 1950", which was enacted 30 September 1950 becomes effective this date. This Act abolishes the present Civil Service efficiency rating system and establishes in lieu thereof a firm requirement on each department to develop for its own use one or more performance rating plans for evaluating the work performance of its officers and employees. By specific stipulation, this Act does not apply to certain Governmental activities such as the Tennessee Valley Authority, the Foreign Service of the United States under the Department of State, and the Atomic Energy Commission. However, the Central Intelligence Agency, since it is not included in the list of expressly exempted activities, must consider itself subject to all provisions of this Act.

2. This legislation has been examined to determine whether the CIA should properly be exempted or should endeavor to comply with the requirements of the Act. Certain salient features of the Act, summarized below, present aspects which appear to be highly prejudicial to this Agency in the successful accomplishment of its mission. It is to be noted that, in the main, these negative factors are incompatible with current Agency policies and practices governing security of information and protection of sources of information as well as operating methods peculiar to this Agency.

a. Requirement: No employee of any department shall be given a performance rating and no such rating shall be used as a basis for any action except under a performance rating plan approved by the U. S. Civil Service Commission.

Comment: Accepting the fact that CIA is covered by the Act, it follows that the Agency is covered in toto. There seems to be no alternative whereby certain departmental workers are subject to the Act and, at the same time, persons engaged in sensitive operations are excluded from particular provisions of the Act. In addition, as will be pointed out below, both the Act and implementing regulations issued by the Commission state that performance standards for positions be established and that they be made available to employees concerned as well as to the Commission in certain instances.

b. Requirement: There shall be established in each department one or more boards of review, the chairman of which shall be designated by the Commission. Further, any employee receiving a performance rating of "unsatisfactory" or "satisfactory" is entitled, as a matter of right, to have his case considered by a board of review.

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**Comment:** If precedent is followed, it is to be anticipated that the chairman of each statutory board of review, regardless of the Agency concerned, will be an official of the Commission. In such event, appeals from employees operating in covert capacities cannot be reviewed by such a board without jeopardizing the security of the activity.

**c. Requirement:** In an appeal to a statutory board of review, the appellant or his designated representative shall be afforded an opportunity to submit pertinent information and to hear or examine, and reply to, information submitted by others.

**Comment:** An appellant is in no way restricted as to his choice in selecting his representative. Since there is no stipulation that such representative must be an employee of the same Agency as employs the appellant, the law must be construed as authorizing the appellant to be represented by any individual of his own preference, such as an attorney or union representative. From a practical standpoint, without regard for the serious hazard to security requirements, it is unlikely that any procedure can be devised to comply with this particular clause in handling appeals from covert employees outside the continental limits of the United States.

**d. Requirement:** The Commission is authorized to issue such regulations as may be necessary for the administration of the Act and shall inspect the administration of performance rating plans to determine compliance with the requirements of the Act.

**Comment:** Regulations issued under this authority require that any rating plan proposed by an agency must be set forth in complete detail and include full descriptions of forms, records, and procedures proposed. It is further required that such plans cannot be placed in effect until the Commission's approval has been obtained. Proposals submitted to the Commission must include a rating procedure insuring fair appraisal of performance in relation to job requirements and indicating the manner whereby performance requirements (written or oral) are to be made known to employees. This difficulty is not insurmountable in the case of many departmental and field positions but appears virtually so with regard to positions in covert operations.

**e. Requirement:** Whenever the Commission, upon inspection, shall determine that a performance rating plan does not meet the requirements of the Act and the regulations issued thereunder, the Commission may revoke its earlier approval of such plan and the department concerned shall thereupon be required to use a performance rating plan prescribed by the Commission.

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Comment: This inspection authority appears irreconcilable with the obligations imposed on the Director of Central Intelligence as well as the authorities granted him by Public Law 110 since the most sensitive operations of this Agency would be disclosed should an inspection system by an outside agency involve anything more than a spot check of selected cases.

3. The purpose of Public Law 873 is to provide a plan whereby an agency can recognize the merits of its employees and their contributions to efficiency and economy in its operations and under which those who deserve recognition may be rewarded. There is, of course, no disagreement with the spirit and intent of the law; but for the reasons outlined above it is strongly recommended that appropriate action be initiated without delay to have CIA exempted from the requirements of the Act. Such action might be accomplished by amendment to PL 873 including CIA on the list of exempted activities or by a ruling that the provisions of PL 110 take precedence insofar as this Agency is concerned.

WILLIAM J. KELLY

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MEMORANDUM OF CONVERSATION

**TIME:** Wednesday, 3 October, 10:00 to 10:30 A.M.

**PRESENT:** General [REDACTED] and Messrs. [REDACTED] Heloon, 25X1A

**PURPOSE:** To determine the present status of CIA with respect to the Civil Service Commission in connection with Public Law 873 "Performance Rating Act of 1950"

1. Messrs. [REDACTED] and Heloon reviewed the steps that had been taken in the summer of 1950 to determine whether CIA would request exemption from the application of the Act. It would seem that determination had been made that exemption from this legislation was not required and it was believed that the Civil Service Commission would, on request, accord CIA exemption administratively. It now appears that the Commission is not empowered to make the exemption that CIA requires, and the Commission has so advised CIA orally.

2. The Act, which became effective 29 December 1950, requires all agencies (except those exempted) to conform to the provisions of the Act. These include, but are not limited to, the following:

a.) Each agency shall establish and use one or more performance rating plans for evaluating work performance.

b.) No employee....shall be given a performance rating regardless of the name given to such rating, and no rating shall be used as a basis for any action except under a performance rating plan approved by the Civil Service Commission.

c.) The Board of Review which handles appeals by employees will be headed by a chairman designated by the Civil Service Commission.

d.) Each appellant may designate his representative to appear before the board.

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e.) The Civil Service Commission has the right to inspect administration of the plan; and if it does not approve of the performance rating plan or its administration by an agency, the Commission may revoke the plan and require use of a plan prescribed by the Commission.

3. It was agreed by those present that a wholly unsatisfactory situation existed and that the following action should be taken.

a.) CIA, through its newly appointed Employee Rating Working Group would devise the best possible performance rating system to meet the needs of the Agency.

b.) That at the earliest practical moment, this plan would be installed on an "experimental" basis.

c.) That CIA should request from the Congress appropriate legislation exempting CIA from the provisions of this Act. It was estimated that the Congress could not approve this legislation until June of 1952.

d.) CIA has not yet presented a plan for the approval of the Commission and is, therefore, in some measure technically delinquent. Should inquiry be made by the Commission regarding CIA's plan, the reply should be that CIA is still experimenting with the plan that will best suit its requirements and, further, intends to ask Congress to exempt CIA from the provisions of the Act.

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☐ ACTION  
☐ COMMENT  
☐ CONCURRENCE

- ☒ INFORMATION  
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REMARKS:

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